

Exhibit E

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Case no. 1:23CV00878-TDS-JEP

DEMOCRACY NORTH CAROLINA; NORTH CAROLINA BLACK ALLIANCE; LEAGUE OF WOMEN VOTERS OF NORTH CAROLINA,)
vs.)
ALAN HIRSCH, in his official capacity as CHAIR OF THE STATE BOARD OF ELECTIONS; JEFF CARMON III, in his official capacity as SECRETARY OF THE STATE BOARD OF ELECTIONS; STACY EGGERS IV, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KEVIN LEWIS, in his official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; SIOBHAN O'DUFFY MILLEN, in her official capacity as MEMBER OF THE STATE BOARD OF ELECTIONS; KAREN BRINSON BELL, in her official capacity as EXECUTIVE DIRECTOR OF THE STATE BOARD OF ELECTIONS; NORTH CAROLINA STATE BOARD OF ELECTIONS,)
Defendants.)

30 (b) (6) DEPOSITION OF THE
STATE BOARD OF ELECTIONS by
PAUL COX

NELSON MULLINS RILEY & SCARBOROUGH
301 HILLSBOROUGH STREET
RALEIGH, NC 27603

10:03 A.M.
MONDAY, FEBRUARY 24, 2025

By: Denise Myers Byrd, CSR 8340, RPR

1 what happened on the ground.

2 Q. Sure. That makes sense.

3 Are there any other kind of specific
4 archetypes or examples of a way in which you or
5 the state board are aware of an error being made
6 in the -- or a unique situation that might not
7 be captured by how the system was designed to
8 work did in fact occur?

9 A. There is a unique situation that happened in
10 Watauga County during the election with regard
11 to same-day registrants. I'm not sure that it
12 would lead to sort of anomalies or, you know,
13 data that would give a misleading picture in the
14 data that we produced, but it's possible it
15 could have.

16 There was a group of same-day
17 registrants who failed mail verification, I want
18 to say 20 to 30, and the county board identified
19 all of these verification cards that were
20 returned as undeliverable and noticed, to their
21 great credit, there was no problem whatsoever
22 with how these cards were addressed, and they
23 should have been delivered because a lot of them
24 were Appalachian State University addresses and
25 they're very familiar with how those should be

1 addressed and how those can be delivered.

2 I think there were some others that
3 were around the Boone area as well, but the
4 county identified this and were -- you know,
5 they brought it to me and said, look, you know,
6 we have this group of verification mailings that
7 have come back as undeliverable, but they
8 actually weren't stamped as undeliverable, they
9 were stamped with some different status, like
10 return to sender, some other designation that
11 would lead you to believe that it's misaddressed
12 or, you know, can't be delivered at this
13 address.

14 And I also know that the county board
15 spoke with the Postmaster for the university, or
16 for Boone, I don't remember which one it was,
17 and that person indicated, yeah, these are
18 correctly addressed, I don't know why they
19 didn't go through.

20 The mail for Watauga County gets routed
21 through the Greensboro postal processing center,
22 or distribution center, I forget what they call
23 if for the US Postal Service, and we brought
24 this to the attention of the Greensboro
25 facility -- especially during the voting process

1 we're in regular communication with the postal
2 service on a variety of issues -- and asked them
3 to look into it to see why did these get stamped
4 this particular way, were these stamped
5 incorrectly, and I elevated as well with the
6 general counsel's office to the postal service
7 in DC. To their credit, they turned around and
8 got back to us, and they did identify that that
9 labeling was misapplied by the Greensboro
10 facility.

11 And I'm not remembering exactly how it
12 resolved, but the gist is that the county board
13 worked with the postal service and was able to
14 resend the verification mailings, and I don't
15 know exactly how that's represented in the data.
16 It may -- for the same-day registration
17 verification.

18 So that's a long way of saying there's
19 another example of where the process was
20 intending a certain way, and I don't know if the
21 data is going to represent it 100 percent the
22 way that we intended the process to show.

23 Q. Are there any other examples that come to mind,
24 things like that, or are those the two that kind
25 of jump out?

1 Q. But it was the state board's instruction that
2 counties should challenge voters who failed
3 same-day verification under the two-mailer
4 system at the time?

5 A. My understanding is that is correct prior to the
6 2018 decision in NAACP case.

7 Q. Right. So it's fair to say that the pre 747
8 scheme applied the same two-mailer system to
9 both regular registration applicants and to
10 same-day registration applicants?

11 A. Yes.

12 Q. Did the state board have any reason to believe
13 that same-day registrants needed to be treated
14 differently than regular registrants with
15 respect to mail verification?

16 A. The state board did not, no.

17 Q. Did the state board have any --

18 A. Well --

19 Q. Go ahead.

20 A. I'll put it this way, so we're in a deposition
21 talking about changes that were made in
22 Senate Bill 747, and the state board did not
23 advocate for there to be any changes to the
24 same-day registration process through
25 legislation.

10 But to answer your question, the
11 state board did not initiate any sort of request
12 or advocacy with regard to changing mail
13 verification for same-day registrants.

14 Q. The state board didn't have any study or inquiry
15 that demonstrated a need for such changes?

16 A. My understanding is that it may have been
17 state board data that led to -- certain people
18 to advocate or members of the legislature to
19 seek a change in the way same-day registration
20 occurred, but the state board did not produce
21 any analysis or come to any conclusions from any
22 such analysis that led to the state board
23 advocating that.

24 Q. Got it.

25 ATTORNEY SHENTON: I'm going to

1 introduce what I'll mark as Exhibit 10, and this
2 is one that I'm going to share my screen on as
3 well, but I will read the Bates number into the
4 record just as soon as I get it up.

5 (WHEREUPON, Exhibit 10 was marked for
6 identification.)

7 BY ATTORNEY SHENTON:

8 Q. Yes. So this is a document that's been produced
9 by the state board in this litigation. It's
10 Bates-Stamped NCSBE 479, and hopefully you can
11 see my screen in just a moment here.

12 A. Uh-huh.

13 Q. Do you see that?

14 A. I do.

15 Q. Do you recognize this document?

16 A. Yes.

17 Q. What is it?

18 A. This is a data report that we produced, we the
19 state board, to provide information on address
20 verification for same-day registrants over -- in
21 previous elections.

22 Q. In those four elections at the top, 2016, 2018,
23 2020, and 2022?

24 A. Correct.

25 Q. And it was breaking it down by various

1 demographic categories; is that right?

2 A. Yes.

3 Q. Do you recall which categories you examined? We
4 can go through it if you need to.

5 A. It's whatever's on this document.

6 Q. Right. I want to focus here at the very top on
7 the right-hand side where statewide verified
8 addresses and failed mail verifications by
9 registration type and election.

10 Can you see that, or do you need me to
11 zoom in a little bit?

12 A. I can see it.

13 Q. So if I'm reading this right, it shows the
14 number of verifications, the number of failed
15 verifications for both new registrants and
16 updated registrations in each of those four
17 general elections that we were talking about,
18 and then it gives a failure rate for each of
19 those elections in that registration type; is
20 that right?

21 A. Yes.

22 Q. And take a moment to review those numbers and
23 tell me if you'd agree with me that it appears
24 the new registrants in each election examined
25 here failed mail verification at a lower rate

1 than those updating their registration.

2 A. I agree with that.

3 Q. And you would agree with me that the average
4 rate across those four elections is lower for
5 new registrants than it is for updated
6 registrants?

7 A. Yes.

8 Q. Did the state board produce this data at the
9 request of a particular individual or
10 individuals?

11 A. I believe this data was produced for the House
12 Government Operations Committee, specifically
13 staff director Joe Coletti requested some
14 information about same-day registration
15 statistics. If I'm remembering correctly. I
16 don't know. You would have the mails to show
17 who it went to.

18 Q. But it's your recollection that this was
19 produced for the house committee that you
20 referenced?

21 A. Yes.

22 Q. And was each of these data categories
23 specifically requested by Joe Coletti or whoever
24 it was? I can represent to you that it was
25 Joe Coletti.

1 A. It should be, yeah. If it's not, let us know.

2 Q. Will do.

3 I want to ask some questions about the
4 kind of rationale for the purpose of the mail
5 verification system in the North Carolina
6 election administration process.

7 If you had to define it in a sentence
8 or two, what would you say is the purpose of
9 mail verification in the North Carolina election
10 code?

11 A. Well, I'll start just by saying, you know, mail
12 verification has been part of registration in
13 North Carolina for decades, and it was, you
14 know, enacted a long time ago under a long-ago
15 legislature, you know, with potentially
16 different -- I mean, obviously, in a different
17 era where we didn't have sort of instantaneous
18 communications.

19 But my understanding of what mail
20 verification does is it is an effort to as best
21 as possible verify that a person seeking to
22 register as a voter in North Carolina actually
23 lives at the residence they claim.

24 Q. In your professional judgment, how well
25 calibrated is mail verification to that goal of

1 determining that someone lives where they claim
2 they live?

3 A. It is an imprecise effort to ascertain that
4 information. It does provide some information
5 that is useful; namely, you know, if it bounces
6 back as undeliverable is some indication that
7 perhaps that person doesn't live there. It's
8 not always true because we know that mail
9 verification can fail for other reasons,
10 independent of whether the person lives there or
11 not.

12 So I guess that's the way I would say
13 it. It's a method that gives you some
14 information about where someone resides, but it
15 is imprecise information.

16 Q. What makes it imprecise? What are some of the
17 known imprecisions of the mail verification
18 system?

19 A. Well, to start with, you know, to succeed at
20 mail verification, mail just has to get
21 delivered. It doesn't necessarily mean that,
22 you know, the person who registered at a
23 particular place lives there; it just means that
24 mail can be delivered when it's addressed to
25 that person there.

1 And, you know, I don't know if you
2 experience this, but I get mail addressed to
3 different people who don't live at my house all
4 the time, so it's not that the postal service
5 won't deliver things that are addressed to
6 someone who doesn't live there.

7 From anecdotal conversations with
8 county board directors, I understand that, you
9 know, people who live in multiunit dwellings,
10 apartment complexes, et cetera, they can fail
11 mail verification more frequently, and part of
12 that is because I think at, you know,
13 single-family home residences, there isn't quite
14 as much -- my understanding is that mail can get
15 delivered even if it's misaddressed to those
16 single-family homes more easily than mail is
17 delivered to somebody who doesn't reside at a
18 multiunit dwelling. That's just anecdotal.
19 That's my understanding from what I've heard
20 from, for example, the Guilford county director
21 was explaining this to me.

1 receive it and data to be entered 100 percent
2 accurately into the system so that the mail gets
3 sent to the right place. Both of those places
4 are places you could have a breakdown and lead
5 to the mail not getting delivered correctly.

6 And then, you know, we do experience,
7 you know, occasional problems with mail getting
8 delivered even when it's addressed correctly. I
9 mentioned the situation with Watauga County
10 during the general election.

11 I think in general the postal service
12 does a really good job of delivering election
13 mail, including voter registration cards, but,
14 you know -- and I think that's why we have the
15 two-mailing system for new registrants, to avoid
16 a situation where you have a postal mishap the
17 first go round, but then to -- if it was
18 actually correctly addressed, that in the second
19 one, you have a chance to get it right that
20 time.

21 Q. Is that -- is that likelihood of a mistake being
22 corrected by a second mailer higher or lower for
23 any reason in the context of same-day
24 registration?

25 A. No.

1 Q. But the same-day registrants in the post 747
2 scheme do still only get that one mailer,
3 correct?

4 A. Right. And that's addressing a situation --
5 that's addressing what's perceived to be a
6 policy problem at the General Assembly under my
7 perception that too many people were failing
8 mail verification and it being under the pre 747
9 scheme and it being too late to do anything
10 about their ballots because the second mail
11 verification came back after the canvass.

12 Q. Okay. We'll talk about that in a little bit.

13 So we've talked a little bit about
14 these various imprecisions in the mail
15 verification system.

16 Would it be fair to say there's some
17 correlation there with the discrepancies that we
18 were talking about earlier in the context of
19 SOSA and the voter making a mistake or a voter
20 changing a name, that sort of thing, could
21 impact the mail verification process by some
22 times rendering that mail non-deliverable?

23 A. It could. I wouldn't say that all of those
24 discrepancies would. I mean, I think the most
25 likely discrepancy would be a mistake in

1 might experience that problem?

2 A. Yes.

3 Q. Have you heard reports of college dormitories
4 experiencing issues with mail verification?

5 A. Yes.

6 Q. Do you have any understanding, general or
7 specific, about how widespread that issue is on
8 college dormitories in North Carolina?

9 A. I can't give you -- I can't like quantify it,
10 but I can say, you know, anecdotally we do run
11 across -- in particular with college
12 dormitories, their addressing conventions may
13 not always be obvious. And I think we produced
14 in discovery like what Wake County does for its
15 poll workers. They have a sheet that shows all
16 the universities and colleges in Wake County and
17 how they address residential housing -- I mean,
18 on-campus residences. And you can see from that
19 that there are widely varying ways that students
20 are supposed to address mail to themselves.

I know that, you know, Guilford County,
which is home to a number of college and
universities, also has a number of different
conventions, and it's not all -- like I say,
it's not all uniform. So it sort of depends on

1 the university and how it routes mail that
2 gets -- is being sent to its residents.

3 Q. Do you have any understanding, general or
4 specific, about how same-day registration is
5 used on college campuses, how widespread it
6 might be?

7 A. I can't quantify it, but I can give you a couple
8 of facts of life that may bear on this. One is
9 that, you know, college students are, you know,
10 of the age where they may be registering to vote
11 for the first time. They are more likely than
12 the general population to move, like, every year
13 and may experience, you know, different -- may
14 more frequently experience differences in how
15 they perceive their domicile to be established
16 with regard to whether their original home they
17 move from to their college versus their
18 university town in terms of where there actual
19 residence and domicile shall be.

20 So for all those reasons, I think
21 college and university students are more likely
22 to have to register -- update their registration
23 more frequently than the general population, and
24 that is likely -- just as a sort of logical
25 exercise likely to lead to more use of same-day

1 registration than the general population, but I
2 don't have a way to quantify it.

3 Q. Does that logical understanding track with kind
4 of the factual experience of the state board
5 over the past few election cycles?

6 A. Yeah. We hear from -- anecdotally, we hear from
7 directors and counties that have a large college
8 student population that college students are
9 using same-day registration pretty -- at a
10 pretty high volume.

11 Q. But you mention you haven't done any
12 quantitative data driven study about what the
13 usage rate of a college student in a particular
14 county or across the state would be as compared
15 to the population as a whole?

16 A. No.

17 Q. Has anyone ever requested that you do such a
18 study?

19 A. Not that I'm aware of.

20 Q. All right. I want to turn now to the
21 legislative process for Senate Bill 747.

22 A. If you'll excuse me, I'm just going to fill up
23 my ice.

24 Q. So as an initial matter, I'm going to give you a
25 bunch of names. You tell me if you've ever

1 A. I'm sure I had conversations with Ann Webb from
2 Common Cause. I know I had conversations
3 with -- I think with Bob Hall, but I don't think
4 it was about same-day registration. I think it
5 was about some other aspect of Senate Bill 747,
6 the election observers part.

7 I had a lot of conversations with
8 Gerry Cohen who was a former legislative
9 nonpartisan staff person who is now on the
10 Wake County Board of Elections, a number of
11 county directors of elections and, of course,
12 state board staff, but that's not really what
13 your question is about.

14 Q. Did you ever have any discussions with Andy
15 Jackson?

16 A. No.

17 Q. Jim Womack?

18 A. No.

19 Q. Cleta Mitchell?

20 A. No.

21 Q. Jay DeLancy?

22 A. Not about this.

23 Q. Carol Snow?

24 A. No.

25 Q. When did you first see a draft of

1 | Senate Bill 747?

2 A. Probably when it was introduced.

3 Q. Introduced on the senate side?

4 A. Right.

5 Q. Was that your first awareness that there would
6 be elections legislation in the 2023 session?

7 A. We had heard that there was likely going to be
8 some elections legislation. I think it was
9 publicly record as well from members of the
10 legislature or publicly stated by members of the
11 legislature, the majority, that there would be
12 some elections legislation, but we didn't know
13 the specifics until it was introduced.

14 Q. Do you remember approximately when you learned
15 that there would be legislation?

16 A. Sometime earlier in 2023.

17 Q. And you received some data requests, as you
18 mentioned, from Joe Coletti. Was that early in
19 2023?

20 A. I don't remember, but, you know, you have the
21 documents in discovery.

22 Q. He first reached out via email?

23 A. That's right.

24 Q. Did you understand those data requests to be
25 calibrated for the drafting of legislation?

1 that it's going to lead to lots of consequences
2 that you haven't thought about it, then we'll
3 say that.

4 Q. Do you recall what the initial version of
5 Senate Bill 747 proposed for same-day
6 registration changes?

7 A. Yeah. It would have changed same-day
8 registration to a method of provisional voting
9 where I believe the voter -- most voters would
10 have to come back with additional proof of their
11 residence at the county board of elections
12 office prior to election day, maybe. I can't
13 remember exactly, but, you know, you have the
14 bill draft. You could see what it is.

15 Q. And what do you remember your initial reaction
16 to that proposal being?

17 A. This is going to be incredibly difficult to
18 administer. Provisional voting is -- it's
19 time-consuming at the voting location and it's
20 time-consuming on the back end, when county
21 board staff are researching and making
22 recommendations to each of their respective
23 county boards of elections about whether to
24 approve any provisional ballot.

25 The other challenge with provisional

1 voting is that -- at least until this past year,
2 provisional ballots were not counted until right
3 before canvass. Some counties might have
4 counted some earlier than that, but generally
5 speaking, you would have a provisional meeting
6 right before your canvass meeting which is 10
7 days -- the canvass meeting is 10 days after the
8 election.

9 So one of the big reactions we had is
10 wait a second, you're going to all of a sudden
11 take hundreds of thousands of ballots that would
12 be included in the count on election day and
13 move them ten days later so you have this huge
14 vote dump ten days after the election which
15 seems to be at odds with other provisions in the
16 bill that the legislators were advocating for in
17 terms of getting results earlier.

18 Q. Were any of those changes that seemed designed
19 to get results earlier that come to mind?

20 A. Yeah. The elimination of the grace period for
21 absentee-by-mail ballots.

22 Q. So it seems those were at cross-purposes. One
23 was trying to move the date by which you know
24 which ballots were in the count up and another
25 was moving that date fairly significantly back.

1 A. Right.

2 ATTORNEY SHENTON: Okay. I'm going to
3 introduce an exhibit which I think is
4 Exhibit 11.

5 (WHEREUPON, Exhibit 11 was marked for
6 identification.)

7 BY ATTORNEY SHENTON:

8 Q. This is a document that has been produced by the
9 state board in this litigation. It's
10 Bates-stamped NCSBE 1145.

11 Take a moment to familiarize yourself
12 with the document and let me know when you're
13 ready.

14 A. I'm ready. And this reminds me that another
15 third party that we provided information about
16 during the legislative process with the
17 governor's office. Shouldn't forget them.

18 Q. So I take it you recognize this email.

19 A. Yes.

20 Q. And it's an email from you to Kristen Guillory
21 of the governor's office?

22 A. That's right.

23 Q. And then if you flip to the second page there's
24 a memo attached to the email that goes on for a
25 few pages.

1 Do you recognize the memo?

2 A. Yes.

3 Q. What is the memo?

4 A. The memo was our notes on what the various
5 sections of Senate Bill 747 as introduced would
6 do and any concerns we had on how they would
7 affect the administration of elections.

8 Q. And this memo touched on the same-day
9 registration proposal, correct?

10 A. It did. I believe you have to go to
11 Section 8.1.

12 Q. Turn with me there. It's on page 5, Bate stamp
13 1149. So I want to talk a little bit about this
14 section which starts on this page and then
15 proceeds on to the following page.

16 I want to start with the bottom of the
17 first paragraph there. The last three sentences
18 say:

3 A. Well, so the reason we came to that conclusion
4 was because of the interactions we had with Joe
5 Coletti prior to that and Andy Jackson at the
6 John Locke Foundation had done his own study and
7 produced a blog post or something that called
8 voters who fail mail verification and then have
9 same-day registration ballots count called ghost
0 voters, that's in quotes because they're not
1 actual ghosts, they're actual real people.

12 So that was our assumption that the
13 reason for this must have been because people
14 were worried that you had people -- you had
15 voters who had not verified their residence
16 address who were having their ballots count and
17 using same-day registration.

18 Q. Then proceeding from there to the rest of the
19 paragraph:

20 "This happens quite infrequently.

21 Over every general election between

22 2008 and 2022, around 1 percent of

23 same-day registrants later have their

24 mail verification cards bounce back."

25 Was that based on an analysis that the

1 state board did internally?

2 A. Yes.

3 Q. Did you share that analysis with Mr. Coletti?

4 A. Well, it would have been in that previous

5 exhibit that you showed the data on same-day

6 registration and verification.

7 Q. Because of -- or let me step back for a moment.

8 Did the infrequency of that occurrence

9 have anything to do with the state board's

10 assessment of the mail verification system? Did

11 it bear on the state board's assessment of the

12 effectiveness of mail verification?

13 A. I can't say one way or another. You know, I

14 can't say that there was any time that we sort

15 of stopped and thought, you know, what about

16 this whole mail verification thing, let's look

17 at this data, does it make sense, so it's just

18 mail verification was law and that's what we

19 implemented.

20 Q. Is it fair to say the state board didn't have

21 those concerns independently?

22 A. Right.

23 Q. And then the next paragraph kind of goes in to

24 how the initial proposal for same-day

25 registration in Senate Bill 747 would work, the

1 it's conceivable that our data folks just did
2 it, but I don't know exactly.

3 Q. So you have no specific recollection as to any
4 discussion of why those categories?

5 A. No.

6 Q. And then we were discussing the memo that you
7 and a few others had provided input on about the
8 initial senate version of Senate Bill 747.

9 Would it be fair to say that that memo
10 represents the kind of analysis and position of
11 the state board on that draft of the
12 legislation?

13 A. Yes.

14 ATTORNEY SHENTON: All right. I'm
15 going to introduce another exhibit, which I'll
16 mark as Exhibit 12.

17 (WHEREUPON, Exhibit 12 was marked for
18 identification.)

19 BY ATTORNEY SHENTON:

20 Q. So this is a document that was produced by the
21 state board in this litigation, beginning with
22 the Bates stamp NCSBE 1343.

23 Mr. Cox, take a moment to review the
24 email chain and tell me when you're ready.

25 A. Okay.

1 Q. Do you recognize this?

2 A. Yes.

3 Q. What is it?

4 A. It's an email trail where I and my deputy

5 general counsel were conferring with Senator

6 Berger's staff about the draft bill 747, and

7 after reviewing the Proposed Committee

8 Substitute, or PCS, of Senate Bill 747, we

9 provided those same staff members additional

10 feedback, and then I forwarded that on to

11 Gerry Cohen, who I referred to earlier, and he's

12 responding saying "This is great."

13 Q. Awesome.

14 And that forwarded email thread is

15 between you and Josh Yost and Brent Woodcox; is

16 that right?

17 A. Yes.

18 Q. With Lindsey Wakely cc'd?

19 A. Yes.

20 Q. And you mentioned this was in response to the

21 PCS of Senate Bill 747?

22 A. Right.

23 Q. And PCS stands for Proposed Committee

24 Substitute?

25 A. That's what I think it means, yeah.

1 Q. I want to focus on that first section, same-day
2 registration/provisionals, there at the bottom
3 of the first page.

4 I want to -- can you walk me through
5 what that first sentence means, "We're afraid
6 that requiring the photo ID via DMV-issued ID."

7 A. So the Proposed Committee Substitute changed the
8 draft of how a person would verify their
9 residence address during same-day registration
10 to -- I can't remember exactly, but I remember
11 that there -- it would have to both be a photo
12 ID that was eligible for photo ID use and be a
13 document that could confirm their residence
14 address.

15 And the problem we were trying to
16 explain is that for same-day registrants, we --
17 you know, a lot of people -- well, not just for
18 same-day registrants, but not everybody has a
19 driver's license, most people do, but not
20 everybody has a driver's license, but even those
21 who do have a driver's license, there's plenty
22 of people who don't have their current address
23 on their driver's license. And so we were
24 worried that if you require the proof of
25 residence to be what is the only valid photo ID

1 that we're aware of, you know, common photo ID
2 used for voting that we're aware of, that it
3 also includes an address, which is a DMV-issued
4 ID, if you require that to be the case for
5 proving your residence for same-day
6 registration, it's going to cut out a lot of
7 people who don't have their current address on a
8 DMV-issued identification.

9 Q. Did you have any understanding of which voters
10 that would be likely to be?

11 A. Our sort of understanding would be it would be a
12 lot of people who move frequently, so renters,
13 people who were of lower income, students,
14 et cetera.

15 Q. Would military personnel be in that group?

16 A. Yes.

17 Q. Would it be fair to say that young people are
18 more likely to move more frequently?

19 A. That's an assumption that I would make just
20 about the general state of the world, but I
21 don't have any data to back it up.

22 Q. Does it track with your anecdotal experience at
23 the state board, that younger voters tend to
24 move more frequently?

25 A. Yes.

1 Q. Then I want to turn to the bottom of that
2 paragraph, sentence that begins "A better
3 approach." Can you walk me through what that
4 sentence is recommending.

5 A. Yes. Give a little background, at this point I
6 think to us at the state board it was very clear
7 that the legislature wanted to do something
8 about same-day registration, they wanted to do
9 something about the fact that some people fail
10 mail verification and still have their ballot
11 count, and so our biggest concern with what was
12 being drafted in the various proposals in the
13 senate was that what they were -- what they were
14 drafting as a solution to what they perceived to
15 be a problem was going to impact negatively a
16 lot of voters who were not a source of that
17 problem, in other words, it was going to have an
18 oversized impact for the problem it was seeking
19 to address. It was going to make a lot of
20 people who would have no problem doing mail
21 verification, trip them up during the same-day
22 registration process.

23 So that was our chief concern because,
24 you know, same-day registration is something
25 that a lot of voters rely on. As I said, in a

1 presidential election, there's 200,000 voters
2 who make use of it. And so, you know, we
3 were -- we wanted to -- realizing that this was
4 a legislative policy choice that was going to be
5 undertaken, we wanted to see if we could sort of
6 steer the legislature toward a way that would
7 address the actual population they were trying
8 to address rather than have negative
9 ramifications upon other voters who were not
10 really part of that perceived problem.

11 And so this last sentence is what we're
12 suggesting to the legislative drafters to be an
13 alternative to what they were proposing to
14 change same-day registration procedures.

15 Q. So it's a recommendation that's made in light of
16 the assumption that the legislature wanted to do
17 something on this issue?

18 A. Yes.

19 Q. But it's not a recommendation made pursuant to
20 the state board's determination that something
21 should be done about this issue --

22 A. No.

23 Q. -- the state board's own determination?

24 A. That's correct.

25 Q. And it's also fair to say that the state board

1 didn't have any analysis or study internally
2 that indicated that this was a topic that needed
3 to be addressed as a matter of election
4 administration?

5 A. That's correct.

6 Q. And so when you say a better approach, you mean
7 a better approach to address the issue that you
8 are wanting to address?

9 A. Yeah. And "you" being the legislative drafters,
10 yes.

11 Q. And you mentioned a moment ago that you were
12 operating under the assumption that the
13 legislature wanted to do something about this
14 same-day registration mail verification
15 intersection.

16 What gave you that impression?

17 A. It must have been through -- I mean, first of
18 all, it was part of the initial draft of
19 Senate Bill 747 which was, you know, something
20 that leadership staff in the senate was
21 proposing. So obviously, it was some -- at some
22 level of policy priority among leadership in the
23 senate.

24 And in -- I don't remember exactly our
25 conversations, but we left with an impression in

1 conversations with legislative staff that this
2 was something that was a priority and it
3 wasn't -- it wasn't something that like -- there
4 were aspects of Senate Bill 747 that we were
5 able to successfully convince members of the
6 legislature and their staff that would not be a
7 very good policy idea for the administration of
8 elections and those aspects were removed from
9 the bill. This was not one of those.

10 I mean, this was an objective that we
11 got the impression in our discussions with the
12 legislature and in the various iterations of the
13 drafts of Senate Bill 747 that this was going to
14 stay in some form or another.

15 Q. Okay. So it was at least in part based on the
16 kind of receptivity of changes or omission
17 entirely from the omnibus that eventually became
18 747?

19 A. Right.

20 Q. And then also in part on the conversations and
21 interactions you had with legislative staff
22 about whether or not something could or couldn't
23 come out of the bill?

24 A. Right. I want to -- I want to be clear that I
25 don't remember any specific statement, you know,

1 this is going to stay in, this has to be -- this
2 is going to end up in the final bill that we
3 enact, but, you know, I remember having the
4 distinct impression after conversation that this
5 was going to be a priority.

6 And whenever we are doing legislative
7 advocacy, you kind of have to read the tea
8 leaves on those sort of things, like how far can
9 you push on certain things, you know, are we
10 just going to be barking up the wrong tree by
11 pushing something when you can focus your energy
12 and advocacy efforts on something that you
13 actually have a possibility of making a
14 difference on.

15 Q. Is the same-day registration provision in
16 Senate Bill 747 something that the state board
17 would have pushed harder on in a world where the
18 state board was the one setting the policy?

19 Maybe stated differently, these changes
20 are not something the state board would have
21 adopted or advocated for of their own accord?

22 A. Correct.

23 ATTORNEY SHENTON: I am going to
24 introduce another exhibit which we'll mark as
25 13.

1 eligible to vote in North Carolina?

2 A. I think -- I think the article may give that
3 impression.

4 Q. Do you think it's a justified conclusion from
5 the article, and do you think the article is
6 justified in reaching that conclusion?

7 A. Can you break that up.

8 Q. Sure. Do you think it's a justified
9 interpretation of the article that Dr. Jackson
10 is saying these are ineligible voters?

11 A. I would have to look at the article again. I'm
12 not sure what he was trying to project here.

13 Q. Do you think it would be fair to conclude from
14 the fact that those voters having failed mail
15 verification that they were in fact ineligible
16 to vote in North Carolina?

17 A. Not necessarily.

18 Q. What would it depend on?

19 A. It would depend on them actually lacking the
20 substantive qualifications to vote in an
21 election. As we talked about before, you know,
22 mail verification is our statutory process
23 for -- it's one statutory process for attempting
24 to verify someone's residence address which
25 is -- which plays into their qualifications,

their substantive qualifications to vote, but it
is imprecise. So a person failing of mail
verification does not necessarily mean they lack
the substantive qualifications to vote in an
election. It could, but, you know, that fact
alone doesn't actually prove it.

7 ATTORNEY SHENTON: I want to introduce
8 another exhibit here. This is Exhibit 18.

9 (WHEREUPON, Exhibit 18 was marked for
10 identification.)

11 BY ATTORNEY SHENTON:

12 Q. This is a document produced by the state board
13 in this litigation, Bates-stamped NCSBE 1410.

14 Take a moment to familiarize yourself
15 with the document, and let me know when you're
16 ready.

17 A. Okay.

18 Q. Do you recognize this?

19 A. Yes.

20 | Q. What is it?

21 A. So this is some more correspondence further down
22 the email thread between me and Joe Coletti from
23 the government operations staff and -- the house
24 government operations staff, and then two emails
25 between me and Pat Gannon on our staff about the

1 Q. Has anyone ever indicated to you or to anyone
2 else at the state board of the existence of such
3 evidence that same-day registrants weren't
4 providing bona fide proof of residence at
5 same-day registration?

6 A. I know of one case from like 2018, and I don't
7 know all the details of this, but this is based
8 on our records, this is something that we looked
9 at in preparation for this deposition, looked at
10 investigations records, and we know -- we
11 identified one case from 2018 where the Moore
12 County Board of Elections referred to their
13 local DA someone who they believe misrepresented
14 their address during same-day registration.

15 And our understanding -- and the
16 records are a little spotty because it wasn't
17 our investigation, it was Moore County
18 submitting to the DA.

19 Our understanding of what happened was
20 that a person claimed a former residence that
21 they had, so I don't know if the person moved
22 within county or they moved out of county or
23 what, but that was what the conclusion that the
24 Moore County Board of Elections drew is they
25 were falsely claiming a residence that was their

1 former residence and presumably -- I don't know,
2 but presumably showing some sort of documentary
3 proof of that former residence. And then that
4 was referred to the district attorney. And our
5 records demonstrate -- our records suggest it
6 didn't go forward to a prosecution. But that's
7 the only instance that we could identify of what
8 you asked.

9 Q. Is the state board aware of any instance where a
10 same-day registrant forged a documentary
11 proof-of-residence document to use for same-day
12 registration?

13 A. Not that I'm aware of.

14 Q. Has anyone ever asked the state board to study
15 that issue, the prevalence of it?

16 A. I think you guys asked in discovery whether we
17 have anything like that, and we didn't identify
18 anything.

19 Q. But no one prior to those discovery requests?

20 A. No.

21 Q. Just one last set of questions here.

22 Is it the state board's view that
23 SB 747 same-day registration scheme serves to
24 level the playing field -- is it the state
25 board's view that the Senate Bill 747 same-day

1 registration scheme serves to level the playing
2 field between same-day registrants and regular
3 registrants?

4 A. The state board's never stated that during the
5 debate of Senate Bill 747. You know, the
6 records on that speak for themselves. They show
7 that the state board was suggesting a way for
8 the legislature to address a perceived problem
9 in voters failing mail verification after
10 same-day registration and yet having their
11 ballot counted in the election in a way that
12 would not visit collateral consequences on the
13 broader same-day registration population.

14 Q. Would it be fair to say that in the post 747
15 same-day registration scheme, same-day
16 registrants now must both present documentary
17 proof of residence and pass same day -- or pass
18 mail verification in order to be successfully
19 registered whereas a regular registrant only
20 must pass mail verification?

21 A. Well, that was always the case under the -- the
22 way that same-day registration was enacted; it's
23 just that the mail verification is a single mail
24 verification versus two mail verifications which
25 is what the prior statutory scheme was.